



Insurance Department

State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Acting Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: February 10, 2014 **Time:** 9:00AM **Place:** East Bldg, **Spruce** Room

MEMBERS

(Attendees = x)

COMMISSION MEMBERS

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| Chair, Kirk Smith, <i>Weber Cnty</i> | xMatt Sager, <i>Maricopa Cnty, AZ</i> |
| xCo-Chair, Larry Blake, <i>Washington Cnty</i> | xSylvia Andersen, <i>Public Member</i> |
| xJeff Wiener, <i>Salt Lake Cnty</i> | |

DEPARTMENT STAFF

| | | |
|---------------------------------------|-------------------------------------|-------------------------------------|
| xPerri Babalis, <i>AG Counsel</i> | xBrett Barratt, <i>Deputy Comm.</i> | xMark Kleinfeld, <i>ALJ</i> |
| Suzette xGreen-Wright, <i>MC Dir.</i> | xTammy Greening, <i>Examiner</i> | xJilene Whitby, <i>PIO Recorder</i> |

PUBLIC

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|-------------------|---------------|----------------|
| David Moore | Tige Garner | Carol Yamamoto |
| Lincoln Scoffield | John Lsh | Blake Heiner |
| Clayton Hanson | Michael Smith | James Seaman |
| ? John | Glen Roberts | Garreth Long |
| Pete Stevens | | |

MINUTES

General Session: (Open to the Public)

- **Welcome / Larry Blake, Co-Chair**
Larry noted that Kirk was out of town on business.
- **Adopt Minutes of Previous Meeting**
 - Sylvia **moved** to adopt the minutes, seconded by Matt and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report / Suzette**
Jeff made a **motion** to concur with the report, seconded by Sylvia, vote was unanimous.
 - **Concur with Complaint & Enforcement Report / Suzette**
Motion to concur with the report by Jeff, seconded by Matt and the vote was unanimous
 - Report on total number of licensees
 - **Request for Dual Licensee Expedited Request: None**
 - **Request for Attorney Exemption: Paul Lydolph, III**
Neither Mr. Lydolph nor a representative was present. Jeff made a **motion** to approve the application, Matt seconded it and the vote was unanimous.
- **Administrative Proceedings Action / Mark Kleinfeld, ALJ**
 - **Stipulation & Order:**
 - **Freddie J. "Tyke" Martin**
His insurance license lapsed August 31, 2013, and his real estate license is currently on probation. In violation of the code, Mr. Martin was paid commissions for multiple business transactions he took to Hilary Martin, his x-wife. The department proposes a revocation of his license. Respondent agreed. **Motion** by Matt to concur with the Order, seconded by Sylvia; vote was unanimous.

- Mark noted that **Hilary Martin** did not show up for a pre-hearing conference. A Default Order and revocation of license are being prepared.
- **Williams Title Guaranty & Escrow Agency, Ltd, Inc.** / Perri
Assistant AG, Gary Josephson will handle enforcement issues for the department. He has asked for guidance from the Commission regarding the penalty in this case. Matt thought the full penalty of \$46,000 should be imposed. Jeff said it would be hard for the Commission to make determination in the case since they did not know the facts. All they know is that 461 closings were made will not qualify to hold a title producer license. Perri said she would pass this along to Mr. Josephson.
- **Request for a Hearing:** None
- **Order to Show Cause:** None
- **Informal Adjudicative Proceeding & Order:** None
- **Notice of Formal Adjudicative Proceeding:** None
- **Old Business**
 - **Update: SIRCON Sending Renewal Notices to Both Insurers & Agencies** / Brett
As of March 1 SIRCON will begin sending notices to insurers when their agents fail to renew their licenses. Notices to agencies will need to wait until the Texas SIRCON update is completed. This may take months. Leave this on agenda for updates. Brett will check to see if notices will be sent prior to lapse date.
 - **Outcome of Legislative Rules Hearing January 20, 2014** / Brett
There was nothing as a result of this hearing. Committee had lot of questions about penalty process. Chair indicated there would be no motion. Discussion may spark some legislative changes. Two title bills may be filed. One may change status of the Commission.
 - **Discuss Proposed Changes to R592-2, Administrative Hearings** / Matt
 - Commission and attendees discussed what would be appropriate penalties for lapsed licenses.
 - Suzette said most lapsed licenses are renewed within two weeks.
 - Matt suggested a penalty of \$500 for an individual and \$1,500 for an agency. He preferred \$250 for an individual.
 - Issue of lapsed licenses of researchers was discussed. They would only be fined if they were doing insurance business.
 - Jeff said no other line of insurance had a fee table. Matt suggested reducing lapse time from 45 days to 30 days in Subsection R592-2-5(2).
 - Suzette said licensing fees must be changed legislatively, then by rule.
 - Sylvia made a **motion** to make the penalties \$250 for an individual, \$1,500 for an agency within 30 days of lapse and add to the table a \$100 penalty for failing to provide the Department with a current email. Matt suggested adding the email penalty to Subsection 5(3). Motion failed for lack of a second.
 - Tammy reported that Adam checks for extenuating circumstances then sends a letter asking for work done while license lapsed.
 - Jeff did not think 5(3)(a) could be added to the rule. The stipulating party would have to agree to it.
 - Matt noted that R592-2-7(5) should be deleted from the rule since it conflicts with the code requiring concurrence between Commission and commissioner. He will go through rule and eliminate anything requiring less than concurrence.
 - Pete wanted the record to reflect that in his view Brett's assessment that "nothing happened at the January 20 meeting" was inaccurate.
 - Matt made a **motion** to leave Rule R592-2 on the agenda to discuss next month, seconded by Jeff and the vote was unanimous.

- **Review Status of Filed Rule R592-8-5, Attorney Exemption** / Brett
Changes filed January 15 to begin rulemaking process. Comment period ends March 3.
- **Review Status of Filed Rule R592-11, Annual Reports** / Brett
 - The rule changes will update the annual report requirements and disallow title agencies from operating at a loss in title or escrow. Comment period ends 3-3-2014. Earliest possible effective date is 3-15-2014.
 - Larry expressed concern with Section d regarding the name of the individual title insurance licensee designated as the qualifying licensee. Looking at 31A-23a-204 there could be two people listed there, one for title and one for escrow. Is this going to be an issue? He also wondered if the industry would need time to get into compliance. Brett said a bulletin was released a few months ago to help prepare industry for this change. He suggested another bulletin could be sent out with the form attached alerting industry to those changes.
 - Discussed what the penalty would be for not being profitable in title and escrow. Brett said penalties would be fact based so department could not specify a set penalty amount. Tammy said audits were done when agency found to be operating at a loss.
 - Sylvia expressed concern about punitive nature of penalty. It would add burden to agency struggling with profitability and could increase costs to the public. Discussed what happens if agency is not profitable for 2-3 years. Unprofitability could be red flag to Department to watch agency. Could ask for business plan.
 - Blake said the rule was initially written to protect from predatory activity and low fees to drive competition out. Did the Department have staff and expertise to enforce?
 - The suggestion that the use of low escrow rates could be treated as an unlawful inducement. This way the penalty could be applicable to the one transaction. The Department should not be required to determine which agency is endangering the public by working at a loss.
 - Jeff suggested the rule was doing what it was intended to do. A member of the public suggested that “qualifying person” needed to be defined.
 - Jeff made a **motion** to add (s) to the end of producer(s) in R592-11-3(2)(d). Based on concern that an additional change would have to go through rulemaking process and slow the rulemaking process, Jeff withdrew the motion. He asked that the Department check to see if this could be a non-substantive change.
 - Discussed the issue of being in the business to make money or not based upon whether an individual or agency had a third or more of controlled business. Perri noted that this was one man’s opinion and not an AG opinion.
 - Tammy was asked by the Commission to send them a copy of the annual report form.
- **New Business**
 - **New Prohibited Escrow Settlement Closing Transactions Rule** / Jeff
Handout of rule provided with proposed wording changes. **Motion** by Jeff to review proposed draft and put it on next month’s agenda, seconded by Matt, vote was unanimous.
 - **Recent Changes to CFPB and Impact on Utah Regulation and Bulletin Requiring Title Agency Not to Act as a Loss** / Jeff
CFPB has released rule which outline of numerous costs that will go into effect with the rule in 2015. Costs would impact consumers and should be addressed now. There are factors that will impact us doing business in Utah. As discuss other changes we need to consider impact of CFPB changes.
 - **Legislative Update**
James knew of nothing yet to discuss. Brett said there was nothing about title in the Commissioner’s bill.

- **Rule R592-2 Changes** / Matt

Matt proposed that the Commission proceed to work on changes to this rule.

- **Other Business**

Executive Session NA

- **Adjourn:** **Motion** by Matt to adjourn, seconded by Jeff at 11:17am.
- **Next Meeting:** March 10, 2014, Copper Room

2014 Meeting Schedule

(2nd Monday except in October)

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|-------------------|-------------------|--------|--------|--------|-------|
| Jan 13 | Feb 10 | Mar 10 | Apr 14 | May 12 | Jun 9 |
| Jul 14 | Aug 11 | Sept 8 | Oct 20 | Nov 10 | Dec 8 |